Single Bench

C.F (100)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P. NO. 3956 / 2004

PETITIONER : K. R Dahariya S/o Koduram Dahariya,
Aged about 38 years,
Assistant Teacher,
Primary School Sitamarhi, Block Korba,
R/o ESW-141M.P. Nagar, Korba,
District-Korba (CG).

Versus

RESPONDENTS :

1) State of Chhattisgarh
Through the Secretary,
Adim Jait Avum Anusuchit Jati Vikas
Vibhag, DKS Bhawan, Raipur
(CG).

2) The Commissioner,
Adiwasi Vikas Vibhag, Raipur
(CG).

3) Shri Shrikant Dubey,
Assistant Commissioner,
Adiwasi Vikas Vibhag, Korba,
District-Korba (CG).

4) The Collector,
Korba, District-Korba (CG).

5) The Block Education Officer,
Block Korba, District-Korba (CG).

P.R. No. 3953/04
Presented by Shri ... Advocate
dated 18/10/04

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18.10.
Clerk to A.G. Bilaspur

WRIT PETITION UNDER ARTICLE 226 / 227 OF THE CONSTITUTION OF INDIA

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3956 of 2004

K. R. Dahariya

-Versus-

State of Chhattisgarh & others

Post for order on 23rd September, 2005.

Sd/-
Satish K. Agnihotri
Judge

23.9.05
Seen

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3956 of 2004

K. R. Dahariya

-Versus-

State of Chhattisgarh & others

Mr. P. Diwakar, Senior Advocate with Mr. P. R. Patankar, Advocate for the petitioner.

Mr. P. S. Koshy, Deputy Advocate General with Mr. Pankaj Shrivastava, Advocate for the Respondents No. 1, 2, 4 and 5.

Mr. Ashish Shrivastava, Advocate for the Respondent No.3.

ORDER

(23rd September 2005)

By Justice Satish K. Agnihotri.

1. The present petition filed under Article 226/227 of the Constitution of India impugns the order dated 23.7.2004 (Annexure P/1) whereby the petitioner had been transferred from the Primary School, Sitamadhi, District-Korba to the Boys Middle School, Pali, District-Korba, and the order dated 2.9.2004 (Annexure P/9) whereby the petitioner had been placed under suspension. Both the orders have been passed by the Respondent No. 3/Assistant Commissioner, Tribal Development Department, Korba.

2. The facts in brief, relevant for the purpose of adjudication are that the petitioner, who is an Assistant Teacher, was working at Primary School Sitamadhi, District –Korba had been transferred to the Govt. Boys Middle School, Pali, Block- Pali, District- Korba, within the same district by the Respondent No.3. In the meantime, suspension order dated 2.9.2004(Annexure P/9) was issued on the ground that the petitioner had refused to comply with the transfer order and remained

absent from duty. The petitioner by remaining absent had caused problems and interruptions in the mid-day-meal scheme and the students of Class-Vth could not get their mark sheets in time. Accordingly, the petitioner was placed under suspension under Rule 9 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966. The order of suspension is also impugned here in this petition.

3. Mr. P. Diwakar, learned Senior Advocate, assisted by Mr. P. R. Patankar, learned counsel, appearing for the petitioner submitted that the transfer order has not been passed due to administrative exigency but it has been passed in malafide exercise of powers by the Respondent No.3. The petitioner is the President of the Anusuchit Jati, Anusuchit Janjati, Adhikari Avam Karmchari Sangh (hereinafter referred to "AJAKS") of Tahsil Branch – Korba. The petitioner was exempted from being transferred as per the State Government's Policy dated 24.6.1996 to the effect that the President and Secretary of the recognized Employees Association at State and District level should not be transferred for three years. After completion of three years the President and Secretary could be transferred. It is further submitted by learned counsel for the petitioner that the respondent No.3 namely Shri Srikant Dubey, who had taken over as Assistant Commissioner, Tribal Development Department at Korba does not like the people belonging to the category of Scheduled Caste and Scheduled Tribe and the impugned transfer had been made due to hatred cherished by the Respondent No.3 against the members of S.C. and S.T. communities. To substantiate this allegation, learned counsel submitted that one Assistant Teacher namely Shri Jati Ram Anand, by caste Satnami, was harassed to the extent by the Respondent No.3, that he had committed suicide on 24.9.1995. Learned counsel

next contended that despite the note sheet of the Chief Minister (Annexure P/7), the transfer of the petitioner was not cancelled. The officers at the State level and district level have deliberately not complied with the direction of the Chief Minister. Further, the children of the petitioner are studying in English medium school at Sitamadhi and there is no English medium School at Pali, where the petitioner had been transferred by the impugned order.

4. Learned counsel for the petitioner next submitted that the allegations made in the suspension order are baseless and false. The petitioner was not Incharge of the mid-day-meal Scheme but one Smt. Y. D. Baghel was the Incharge of the mid-day-meal. The suspension order had been passed just to harass the petitioner on account of the fact that the petitioner belongs to the Scheduled Caste category.

5. Mr. Pankaj Shrivastava, learned Panel lawyer, assisting Mr. P. S. Koshy, learned Deputy Advocate General, appearing for the Respondents/State, on the contrary submitted that the petitioner was working as Assistant Teacher at the particular place (Sitamadhi) since 7.1.1991 and the petitioner was not exempted under the said policy decision dated 24.6.1996, as the exemption applied only to those Presidents and Secretaries, who were holding State or District level posts in recognized unions. The petitioner was President at Tahsil level and he had served at the particular place for more than 3 years i.e. about 13 years of service, from where the petitioner had been transferred to the new place i.e. Pali, within the same district.

6. It was submitted that the transfer was made due to administrative exigency as the petitioner alone was not transferred but 152 more persons were transferred from one place to other place. According to learned counsel for the respondents/State out of 153 persons transferred by the impugned order, 30 persons belonged to Scheduled

Caste, 40 persons belonged to Scheduled Tribe and remaining 83 persons belonged to General and other backward classes. The transfer order was not passed by the Respondent No.3 on his own, but as per the recommendation made by the District Level Coordination Committee for Transfer (hereinafter referred to "Committee"). Under the transfer policy a list is prepared district-wise which is sent to the Committee and all the transfers are made on the basis of the recommendations made by the said Committee. The Committee, in the present case, was comprised of the Minister Incharge, the Collector and the Assistant Commissioner, Tribal Development Department. A list of 153 persons has been filed as Annexure R-5(A).

7. Learned counsel for the respondents/State submitted that there is no malafide exercise of powers by the Respondent No.3 as the Respondent No.3 alone was not responsible for transferring employees/Assistant Teachers and the transfer orders were issued by the Respondent No.3 and other officers on the basis of the recommendation of the Committee.

8. In regard to other serious allegations about hatred of the Respondent No.3 towards the particular community i.e. S.C. and S.T. and that one Assistant Teacher committed suicide due the harassment made by Respondent No.3, the Secretary, Govt. of Chhattisgarh, Department of S.C. and S.T. Development was directed to file affidavit. Shri M. K. Raut, Secretary, Department of S.C./S.T. Development, Raipur had filed two affidavits dated 2.8.2005 and 16.8.2005 wherein it was stated that the petitioner had made a complaint containing 17 points through his Union against the Respondent No.3 requesting transfer of the Respondent No.3 to any other place. The matter was examined on the basis of the enquiry conducted by the Sub Divisional Officer (Revenue) wherein all the allegations including the allegation of

suicide committed by one Assistant Teacher namely Shri Jati Ram Anand, levelled against the Respondent No.3, were found not proved. Thereafter, the petitioner again through his Union had submitted a complaint containing 40 points which are part of the petition also. The matter was referred to the Collector, Korba and also to the Commissioner, Tribal Welfare Department for conducting enquiry. The allegations were basically for transferring the Respondent No.3 from the present place of posting to any other place of posting. Learned counsel for the respondents/State submitted that the transfer was made due to the administrative exigency and the Respondent No.3 had no role to play in getting as many as 153 persons, including the petitioner, transferred to various places.

9. Mr. Ashish Shrivastava, learned counsel appearing for the Respondent No.3 submitted that the Respondent No.3 was not in a position to influence the decision of the Committee chaired by the Minister Incharge and the Collector of the district was also a member. For transferring employees within the district, a list was prepared, verified, and scrutinized by the Committee, thereafter the order of transfer was passed on the basis of the recommendation of the Committee. It is further submitted that the personal allegations against the Respondent No.3 of malafide and disliking of the Respondent No.3 towards the community of the S.C. and S.T. is without any basis and the petitioner has not established and proved any bias. The petitioner has made vague and wild allegations which had been examined by the Sub Divisional Officer (Revenue) at the direction of the concerned Secretary to the Government, and all the allegations have been found untrue. The petitioner had not made any allegation against the Committee. The Respondent No.3 is discharging functions as Assistant Commissioner of Tribal Development

Department, Korba. There is no question of any ill-will and malice against any member of the S.C. or S.T. community. The Respondent No.3 has been assigned the responsibility of the development of the tribal community and in his long career the Respondent No.3 had not lagged behind in performance of his duties. The transfer of the petitioner was made along with other 152 persons, in the interest of administration and public, on the basis of the recommendation by the Committee.

10. Having heard learned counsel for the parties and perusing records, I am of the view that the petitioner has failed to prove any malafide exercise of powers by the Committee which has recommended the transfer of not the petitioner alone but 152 more persons in the interest of administration. The allegations of the petitioner against the Respondent No.3 had been found untrue by the Enquiry Officer, appointed by the Collector at the instance of the Secretary of the concerned department. The various allegations made in the averments and which have been made to the Government of Chattisgarh also, it appears, that the main purpose is to seek transfer of the Respondent No.3 from the present place of posting to any other place of posting. Further, the complaints made by the petitioner through the Union for the purpose of seeking transfer of the Respondent No.3, which is not an issue in this matter, had already been referred to the Collector Korba and to the Commissioner, Tribal Development Department, for conducting enquiry and report. In case the allegations are found proved, the appropriate action may be taken by the Government against the Respondent No.3.

11. So far as the transfer of the petitioner is concerned, there is no exemption under the State Government's policy dated 24.6.1996, in the case of the present petitioner, because he was President of the

AJAKS at Tahsil level, and more over he had already spent 13 years at the present place of posting. The ban is only for three years. The transfer policy permits the transfer of the President or Secretary in case the President or Secretary of the Union had completed three years of service at one place of posting. Under these circumstances the petitioner cannot take the benefit of no transfer as per the State Government policy dated 24.6.1996. The other allegations of malafide alleged against the Respondent No.3 are not found proved as the transfer order was made at the recommendation of the Committee, not for transferring the petitioner alone but 152 persons more. Out of 153 persons transferred at the recommendation of the Committee 30 persons belonged to S.C. 40 persons belonged to S.T. and remaining 83 persons belonged to general and other back ward classes.

12. The Supreme Court in the catena of decisions, mainly in the case of E. P. Royappa Vs. State of Tamil Nadu, A.I.R. 1974 S.C. 555 K. Narayanan & others Vs. State of Karnataka & others A.I.R. 1994 S.C. 55, B. Varadha Rao Vs.State of Karnataka & others, A.I.R. 1986 S.C. 1955, Rajendra Roy Vs. Union of India, A.I.R. 1993 S.C. 1236, State of U.P. & another Vs. Siya Ram & another, (2004) 7 S.C.C. 405, Union of India & others Vs. Janardhan Debanath & another, (2004) 4 S.C.C. 245, State of U.P. & others Vs.Gobardhan Lal, 2004 A.I.R. SCW 2082, has clearly settled the position of law that the transfer is a condition of service and necessary in the public interest and efficiency in public administration. The decision of the employer should not be substituted in the interest of the administrative exigency of the service, except in the case of malafide exercise of powers or violation of any statutory Rules. The impugned order in the present petition is passed neither in the malafide exercise of powers nor in violation of statutory provisions of law nor there was any complain about

competence of the authority. The impugned transfer order is passed in the administrative necessity.

13. It is, therefore, held that the impugned transfer order has been made on the ground of administrative exigency as well as in the public interest.

14. Mr. Shrivastava, learned counsel for the respondents submitted that the petitioner was transferred by the order dated 23.7.2004 which was made effective with immediate effect. The petitioner disobeyed the order of transfer and did not join the new place of posting before 23rd October, 2005. There were certain other illegalities like mid-day-meal scheme of which he was the Incharge Officer, and he had not handed over the charge to any other person and remained absent as a result the students could not be served proper mid-day meal. The students of class-5th also could not get their mark sheets in time as the petitioner remained absent from duty and did not join the new place of posting. Learned counsel for the respondents further submitted that the suspension order was passed in exercise of powers under Rule 9 of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules 1966.

15. It was further submitted that it is proposed to hold a departmental enquiry against the petitioner for various charges made against him in the suspension order dated 2.9.2004. Learned counsel for the respondents/State submitted that the impugned suspension order dated 2.9.2004 should not be interfered with as serious allegations of misconduct had been made against the petitioner.

16. It is well settled principle of law that the order of suspension is not an order imposing punishment on a person found to be guilty. The suspension is temporary and it does not involve punishment with civil consequence. The suspension means a temporary deprivation not

amounting to reduction of his rank or status, the employee continues tobe a Govt. servant but he is not permitted to work to avoid undue influence in the proceedings of the departmental enquiry and likely tempering of records. In the case of Pearlite Liners (P) Ltd. Vs. Manorama Sirsi, (2004) 3 S.C.C. 172 the Supreme Court held that "If the management feels that the plaintiff is not complying with its directions it has a right to decide to hold an enquiry against her. The management cannot be restrained from exercising its discretion in this behalf".

17. In the present case the impugned suspension order has been passed to hold an enquiry to examine the genuineness of the allegations made in the suspension order, because it is not a punitive order and does not involve punishment with civil consequence. The suspension at this stage cannot be quashed.

18. The petitioner has filed a note sheet of the Health and Family Welfare Department, Government of Chhattisgarh as Annexure P/7 wherein it appears that the Chief Minister after consideration of the representations has directed to cancel the present transfer order. It is not clear as to how the petitioner had obtained a copy of the note-sheet. The obtaining official document of the Govt. indicates about the conduct of the petitioner and this is highly deprecated. However, if there is any order passed by the Govt. canceling/modifying the impugned transfer order that may be considered by the State authorities.

For the reasons stated above the petition is dismissed, no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur